

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

TOMMY THOMASON,

Plaintiff,

CIVIL ACTION NO. 07-CV-15041-AA

vs.

DISTRICT JUDGE JOHN CORBETT O'MEARA

**CORRECTIONAL MEDICAL
SERVS., INC., et al.,**

MAGISTRATE JUDGE MONA K. MAJZOUB

Defendants.

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REPORT AND RECOMMENDATION

I. RECOMMENDATION: Defendant C. Kanduru should be dismissed without prejudice pursuant to Fed. R. Civ. P. 4(m).

II. REPORT:

This matter comes before the Court on Plaintiff's Response to this Court's Order to Show Cause why Defendant C. Kanduru should not be dismissed pursuant to Fed. R. Civ. P. 4(m). (Docket nos. 71, 64). All pretrial matters have been referred to the undersigned for action. (Docket no. 8). The Court dispenses with oral argument on this motion. E.D. Mich. LR 7.1(e). This matter is now ready for ruling.

Rule 4(m) provides that if a defendant is not served within 120 days after the complaint is filed, the court must dismiss the action without prejudice against that defendant or order that service be made within a specified time. Plaintiff filed his Complaint on November 27, 2007. (Docket no. 1).

Plaintiff is proceeding *in forma pauperis*. (Docket no. 6). Therefore, the Court has directed the US Marshal to attempt service of this defendant at all of the addresses submitted by Plaintiff. (Docket nos. 12). The Court has ordered Defendant CMS and the Michigan Attorney General's office to submit an address for Defendant Kanduru. (Docket no. 57). The Michigan Attorney General's office responded that he is not listed as an employee of the Michigan Department of Corrections or as an employee of Correctional Medical Services. (Docket no. 70). Defendant CMS earlier stated that Defendant Kanduru has never been employed by CMS. (Docket no. 47 at 2). Therefore, at this point this Defendant cannot be identified or located. Plaintiff, in his Response, simply speculates that this Defendant must be employed by either Defendant CMS or the State of Michigan. Plaintiff fails to offer any reasonable grounds to believe that an extension of time to allow for service would result in this Defendant being served with process. Therefore, this Defendant should be dismissed without prejudice pursuant to Rule 4(m).

III. NOTICE TO PARTIES REGARDING OBJECTIONS:

The parties to this action may object to and seek review of this Report and Recommendation, but are required to act within ten (10) days of service of a copy hereof as provided for in 28 U.S.C. § 636(b)(1) and E.D. Mich. LR 72.1(d)(2). Failure to file specific objections constitutes a waiver of any further right of appeal. *Thomas v. Arn*, 474 U.S. 140 (1985); *Howard v. Sec'y of Health & Human Servs.*, 932 F.2d 505 (6th Cir. 1991); *United States v. Walters*, 638 F.2d 947 (6th Cir. 1981). Filing of objections which raise some issues but fail to raise others with specificity, will not preserve all the objections a party might have to this Report and Recommendation. *Willis v. Sec'y of Health & Human Servs.*, 931 F.2d 390, 401 (6th Cir. 1991); *Smith v. Detroit Fed'n Of Teachers Local 231*,

829 F.2d 1370, 1373 (6th Cir. 1987). Pursuant to E.D. Mich. LR 72.1(d)(2), a copy of any objections is to be served upon this Magistrate Judge.

Any objections must be labeled as “Objection #1,” “Objection #2,” etc. Any objection must recite *precisely* the provision of this Report and Recommendation to which it pertains. Not later than ten days after service of an objection, the opposing party must file a concise response proportionate to the objections in length and complexity. The response must specifically address each issue raised in the objections, in the same order and labeled as “Response to Objection #1,” “Response to Objection #2,” etc.

Dated: December 03, 2008

s/ Mona K. Majzoub
MONA K. MAJZOUB
UNITED STATES MAGISTRATE JUDGE

PROOF OF SERVICE

I hereby certify that a copy of this Report and Recommendation was served upon Tommy Thomason and Counsel of Record on this date.

Dated: December 03, 2008

s/ Lisa C. Bartlett
Courtroom Deputy